

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

LATROY AGBOHLA,

Petitioner,

v.

NORTH CENTRAL CORRECTIONAL
COMPLEX,

Respondent.

CASE NO. 2:15-CV-02408
JUDGE ALGENON L. MARBLEY
MAGISTRATE JUDGE KEMP

OPINION AND ORDER

On June 24, 2015, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be dismissed. (ECF No. 6.) Petitioner has filed an *Objection* to the Magistrate Judge's *Report and Recommendation*. (ECF 7.) Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons that follow, Petitioner's *Objection* (ECF No. 7) is **OVERRULED**. The *Report and Recommendation* (ECF No. 6) is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner raises a claim under the Fourth Amendment. The Magistrate Judge recommended dismissal of the claim under *Stone v. Powell*, 428 U.S. 465 (1976), which holds that Fourth Amendment claims cannot be raised in a federal habeas petition, so long as the Petitioner had a full and fair opportunity to litigate the claim in the state courts. Petitioner argues that he did not have a full and fair opportunity to litigate his claim in view of the Ohio Supreme Court's summary dismissal of his appeal. Petitioner also contends that the State's failure to raise an issue under *Stone v. Powell* may constitute a waiver of this defense.

Petitioner's *Objection* is not well taken. In *Riley v. Gray*, 674 F.2d 522 (1982), the United States Court of Appeals for the Sixth Circuit held that Ohio's mechanism for resolution of Fourth Amendment claims is clearly adequate absent frustration of the presentation of the claim based on a failure of the "mechanism" by which a criminal defendant obtains resolution of the claim in the Ohio courts. *Id.* at 526. The Ohio Supreme Court's summary dismissal of the claim does not present such circumstance. Further, Respondent had no opportunity to raise the issue, as the Magistrate Judge recommended dismissal of this case under Rule 4 of the Rules Governing Section 2254 proceedings, which provides for preliminary review and dismissal of the case where the record shows that Petitioner plainly is not entitled to relief. The dismissal of a § 2254 petition under the *Stone v. Powell* constitutes such a circumstance. *See, e.g., Oetman v. Cox*, No. 1:09-cv-1027, 2010 WL 160579, at *5 (W.D. Mich. Jan. 8, 2010); *Haytham v. Bell*, No. 1:07-cv-436, 2008 WL 3875399, at *2-3 (W.D. Mich. Aug. 18, 2008).

For these reasons and for the reasons discussed in the Magistrate Judge's *Report and Recommendation*, Petitioner's *Objection* (ECF No. 7) is **OVERRULED**. The *Report and Recommendation* (ECF No. 6) is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Judge